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ABSTRACT

This document describes Minnesota statutes and cases that provide rights, responsibilities, and protections for young people different from those applicable to adults. It gives legislators an overview of all laws affecting young people, serving as a reference aid for current state policies toward youth. It is basically a state guide, including federal statutes and cases only in a few areas where they dictate state policy or where state policy has been closely linked with federal law for some other reason. A glossary of terms used throughout the guide is included. Part I describes the major statutory and case law that distinguishes provisions for youths from adults. These provisions are organized into the areas of economic regulations, education, family relations, health and social services, criminal law, and a miscellaneous section for other age provisions. Part II explains the courts and procedures that deal with youths and is divided into three sections: (1) Civil Adult Court, describing procedures applicable to minors who are parties or witnesses to civil lawsuits in adult court; (2) Criminal Adult Court, describing procedures applicable to minors who are involved in criminal cases in adult court as witnesses or parties, and explaining certain procedural protections pertaining to the care and custody of minors found to have committed criminal acts; and (3) Juvenile Court, describing the purposes and procedures of the juvenile court, the court most commonly used for hearing and decided cases involving criminal acts committed by minors, and cases involving children in need of protection or care by the state. (NB)

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YOUTH AND THE LAW

A Guide for Legislators

August 1986

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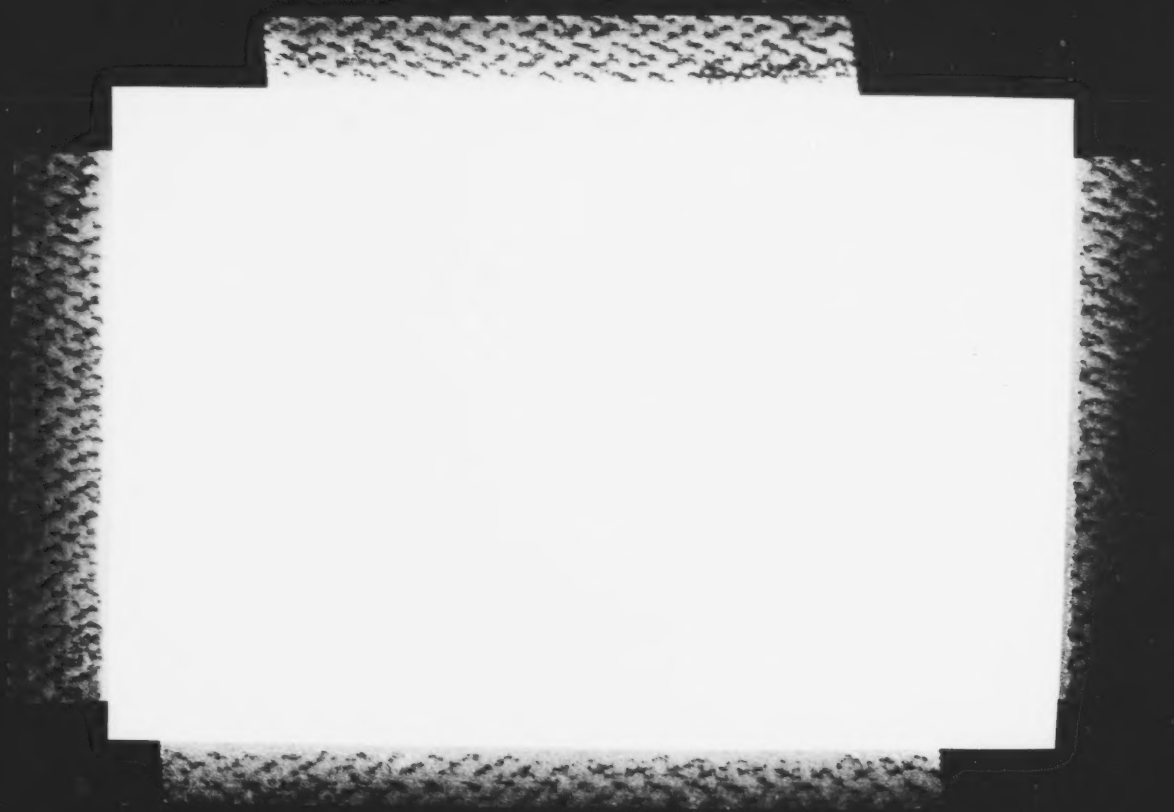

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Research Department
Minnesota House of Representatives
600 State Office Building, St. Paul, MN 55155
(612) 296-6753

YOUTH AND THE LAW

A Guide for Legislators

August 1986

YOUTH AND THE LAW was a cooperative project by Legislative Analysts in the Research Department of the Minnesota House of Representatives. Topical questions should be addressed to the analyst who covers that particular subject area.

ECONOMIC PROTECTION	Deborah McKnight	296-5056
EDUCATION	Marsha Gronseth	296-5058
FAMILY RELATIONS	Deborah McKnight	296-5056
HEALTH	Kathryn Lamp	296-8639
SOCIAL SERVICES	Laura Kadwell	296-5044
CRIMINAL LAW	Emily Shapiro	296-5041
CIVIL LAW	Deborah McKnight	296-5056
JUVENILE LAW	Emily Shapiro	296-5041

Secretarial Support was provided by Jackie Ballard.

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INTRODUCTION

Youth and the Law describes Minnesota statutes and cases that provide rights, responsibilities, and protections for young people different from those applicable to adults. The purpose of this guidebook is to give legislators an overview of all laws affecting young people in order to have a reference aid for current state policies toward youth. This guidebook should prove useful for evaluating any proposals for changing these policies.

This is basically a STATE GUIDE. Federal statutes and cases are included only in a few areas where they dictate state policy or where state policy has been closely linked with federal law for some other reason. Youth and the Law does not attempt to cover federal statutes, cases or programs in general.

LEGAL DISTINCTIONS are generally made between adults, who are statutorily defined as age 18 and over, and minors, who are statutorily defined as under age 18. Youth and the Law uses the terms "minor" and "child" as synonyms. Exceptions occur if the text clearly indicates that "child" means a minor of a particular age or means an individual of any age in relation to his or her parents.

Youth and the Law is divided into two parts: Part I consists of substantive laws organized by subject categories. An index to the topic of each statute is provided at the beginning with page reference. Part II explains the courts and procedures that deal with youths. A glossary of terms used throughout both Parts I and II is provided at the beginning of the guide.

GLOSSARY

Age of majority — The period of time after an individual reaches the age of 18 (M.S. 645.451, subdivision. 5).

Civil Action — A lawsuit to establish or redress certain rights. It can be based on a statutory right or a legal rule developed in court cases. It can involve seeking payment of money (damages) or compelling someone to act or refrain from an action (injunction). It involves no possible criminal punishment, such as imprisonment, criminal fine, or developing a record of a criminal conviction. Civil action examples: personal injury, breach of contract, marriage dissolution.

Contract — An agreement between two or more persons that creates a legal obligation to do or not to do a particular thing; especially to perform a service or to buy or sell goods or real estate.

Crime — Conduct which is prohibited by statute and for which the actor may be sentenced to imprisonment, with or without a fine.

Delinquent — A minor who has committed an act that would be a crime if committed by an adult.

Felony — A crime punishable by a sentence of more than one year imprisonment. Fines for felony offenses may range from $4,000 to $50,000, depending on the offense.

Gross Misdemeanor — A crime punishable by a sentence of incarceration for more than 90 days but not more than one year, and/or up to a $3,000 fine.

Juvenile — A person who is younger than the age of majority.

Legal or Full Age — Eighteen years of age or older. (M.S. 645.451, subd. 6)

Misdemeanor — A crime punishable by a sentence of up to 90 days incarceration and/or up to a $700 fine.

Petty Misdemeanor — An offense which is not a crime, which carries no possibility of imprisonment, but for which a sentence of a fine of up to $100 may be imposed.

Status Offender — A minor who has committed an offense which, by its terms, prohibits conduct by a minor that would be lawful if committed by an adult.

Statute of Limitations — A deadline set by statute for bringing a particular kind of lawsuit.

Tort — The area of law involving (1) the breach of a duty to another person, (2) imposed by law, (3) when the person is injured by the breach. It is sometimes defined as the law of legal wrongs which are committed by private individuals against each other and which are not based on contracts. Examples include personal injury and libel.

PART I: THE LAWS

Minnesota law makes many distinctions between adults and young persons' rights and responsibilities. Part I describes the major statutory and case law that distinguishes provisions for youths from adults. These provisions have been divided into the areas of economic regulations, education, family relations, health and social services, and criminal law. There is a miscellaneous section for other age provisions. An index of the subject of each law is provided at the beginning of Part I.

Usually, legal distinctions are drawn at the age of majority, which is statutorily defined as 18 years. Persons under 18 are minors. They are deemed less able than adults to take responsibility for themselves or to carry out obligations to others. Similarly, they are considered more in need of protection both from their own inexperienced judgments and from the actions of others.

Minnesota law makes some distinctions between adults and youth at points other than 18 years. For example, a few rights are withheld and a few protections are extended until ages 19 or 21 in the belief that 18 year olds are not ready to be entirely on their own in particular areas. On the other hand, not all minors are treated identically under the law. In some instances younger children are considered in need of greater protection or unable to carry out the greater responsibilities of older children. As a result, certain statutes treat minors under such ages as 16, 14, or 10 differently from minors over those ages.

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CHILD SUPPORT

All Parents

A parent who is financially able to support a child but fails to do so may have his or her parental rights terminated by the juvenile court. [M.S. 260.221(b)(2)]

Divorced Parents

The court may order either or both parents to pay child support. A parent may also be required to provide health insurance for a child. Child means an individual: (1) under 18, (2) under 20 who is still attending secondary school, or (3) who, because of his or her physical or mental condition cannot support himself or herself. [M.S. 518.17(4); 518.171; 518.54, subd. 2]

Support Guidelines

Statutory guidelines and other specified factors affect the amount of parental support courts will award to children of divorced parents, unless the parents each have separate counsel and reach their own support agreement. [M.S. 518.551, subd. 5]

Unmarried Parents

If an individual admits she or he is a child's parent or if parentage is established in a court action, the individual is legally obligated to support the child. [M.S. 257.67, subd. 1]

Divorced and Unmarried Parents

If a court orders a parent to pay child support, legal mechanisms exist to enforce the order in Minnesota or against a parent who moves to another state. [M.S. 256.87; 257.66; 518.611; 548.091; Chapter 518C]

Step-parents

In determining the amount of public assistance to be granted for a dependent child, the income of a step-parent living in the same household will be considered, after subtracting the first $75 of earned income and any amount the step-parent pays to support other dependents and for alimony and child support. [M.S. 256.74, subd. 1a]

When a divorced parent seeks a change in court-ordered child support, the income of the parents' new spouses, if any, will not be considered in raising or lowering the support amount. [M.S. 518.64, subd. 2]

PROPERTY RIGHTS

Control of a Minor's Earnings or Property

A parent or guardian can claim a minor's wages by notifying the minor's employer. Otherwise, the minor has control of his or her own wages. [M.S. 181.01]

A minor may control his or her own savings account. [M.S. 48.30]

Minor's Contracts

A minor may make a contract but may choose not to complete it, unless it involves the purchase of necessities, like food or shelter. Miller v. Smith, 26 Minn. 248, 2 N.W. 942 (1879).

Wills

A minor may not make a will. [M.S. 524.2 - 501]

Inheritance from Parents

If an individual is adopted, she or he has a legal right to an intestate share of the adopted parents' estate but not to the biological parents' estate, unless the individual was adopted by a step-parent. [M.S. 524.2 - 109]

If a parent does not make a will, children of any age whose parents were married share the estate with the surviving spouse. If no spouse survives, the children share the estate among themselves. [524.2-102 and 524.2-103]

If parents were not married to each other and did not leave wills, children of any age inherit from either parent if parentage is established pursuant to the Uniform Parentage Act. [M.S. 524.2 - 109]

If a parent makes a will, he or she may intentionally disinherit a child. If it seems the child was omitted from the will by error or because of being born after the parent's death, the child will inherit something. [M.S. 524.2 - 108 and 524.2 - 302]

Uniform Transfers to Minors Any kind of property (money, real estate, stocks, etc.) may be transferred to a custodian for a minor's benefit. A custodianship created under this 1985 act lasts until age 21. [M.S. 527.21 to 527.44]

EMPLOYMENT

Age Restrictions No minor under the age of 14 may be employed, except: (1) a minor may be an actor, performer, or model; (2) those 11 and older may be newspaper carriers; (3) those 12 and older may work in agricultural operations. [M.S. 181A.04, subd. 1; 181A.07, subds. 1, 2, 3]

Day and Hour Restrictions On school days during school hours, no minor under 16 years may be employed except with a valid employment certificate. [M.S. 181A.04, subd. 2; 181A.05]

No minor under 16 may work any day before 7 a.m. or after 9:30 p.m. except as a newspaper carrier. [M.S. 181A.04, subd. 3; 181A.07, subd. 3]

No one may employ a minor under 16 more than 40 hours per week or more than eight hours in any 24-hour period, except for minors working in agricultural operations with their parents' or guardian's permission. [M.S. 181A.04, subd. 4; 181A.07, subd. 1]

Occupation Restrictions All minors may be excluded from employment in any occupation which the Commissioner of Labor and Industry finds by rule hazardous to their well-being. The Commissioner also has the power to exempt an individual minor from this restriction. [M.S. 181A.04, subd. 5; Minn. Rules 5200.0940-0960]

Exemptions from Restrictions Minors employed to do home chores or babysitting or employed by their parents are exempt from all the above restrictions. [M.S. 181A.07, subd. 4]

No state law prevents a minor's being employed in any agricultural work permitted by 29 U.S.C. §213(c)(2). [M.S. 181A.11]

Minimum Wage

Minors must be paid at least $3.02 per hour, except those (1) doing certain agricultural work; (2) babysitting as a sole practitioner; or (3) employed part-time by a municipality as part of a recreational program. [M.S. 177.24, subd. 1; 177.23, subd. 7]

Age Discrimination in Employment

Minors and young adults are not protected against this. Different treatment in privileges, benefits, services, or facilities for employees under 21 is permitted. [M.S. 363.02, subd. 6]

Unemployment Compensation

A minor who has worked 15 credit weeks (those for which at least $108 were paid or due) or more in the preceding 52 weeks, at full-time, insured employment is covered by the unemployment compensation law. Uninsured employment includes: (1) agricultural labor performed by a child under 16, (2) service performed by a child under 18 in the employ of a parent, (3) work performed by a student for an academic or vocational program, (4) work performed at a school or university by a student enrolled there, and (5) newspaper delivery by anyone under 18. [M.S. 268.04, subds. 11; 12(13)(f), (15)(d); and 268.07]

EDUCATIONAL RIGHTS AND RESPONSIBILITIES

The state of Minnesota is required by its constitution to provide a free education to all children in the state. This section provides an overview of some of the rights and responsibilities which students have while attending elementary and secondary schools.

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COMPULSORY ATTENDANCE

Age of Attendance; Compulsory Attendance; Penalty

All children between the ages of seven and 16 must attend a public or private school. [M.S. 120.10, subd. 1]

There is a September 1 birthday cutoff date for five year olds to attend kindergarten and six year olds to attend first grade. [M.S. 120.06]

A school age child may be exempted from the mandatory attendance requirements under certain circumstances. [M.S. 120.10, subd. 3]

If the adult responsible for a school age child fails to send that child to school, he or she commits a misdemeanor and can be prosecuted. [M.S. 120.12]

In its first case interpreting this statute, the Minnesota Supreme Court ruled that the part of the statute relating to teacher qualifications which must be met to satisfy the compulsory attendance law violated due process, in that the statute was unconstitutionally vague under both federal and state constitutions. The court found that the statutory requirement that children be taught by teachers whose qualifications are "essentially equivalent" to those of public school teachers did not adequately explain what qualifications were necessary in order for parents teaching their children at home to avoid a criminal prosecution. State v. Newstrom, 371 N.W.2d 525 (Minn. 1985). See also p. 21.

Residency Requirements

School age children who reside within a district operating public schools may attend those schools without charge. [M.S. 120.06, subd. 1]

DISCIPLINE

Corporal Punishment

A school official may use reasonable force to discipline a child. [M.S. 609.06, clause (6)] While the U.S. Supreme Court agrees that the imposition of corporal punishment of school children invades a "liberty" interest, it has held that such punishment can be imposed without any administrative hearing. The opportunity for community scrutiny of a school system plus the availability of common law tort remedies gives adequate protection against teacher abuse. Ingraham v. Wright, 430 U.S. 651 (1977).

Dismissal Generally

Dismissals from school are generally governed by the Pupil Fair Dismissal Act of 1974 [M.S. 127.26-127.39]

Grounds for dismissal are the willful violation of clearly defined school board regulations, substantial disruption of the learning process and the posing of a serious danger to persons or property. [M.S. 127.29, subd. 2] A public school student is entitled to due process and equal protection guarantees when facing dismissal proceedings which include the possibilities of exclusion, expulsion or suspension. [M.S. 127.28] A school must attempt to provide a student subject to dismissal with an alternative education program except under certain circumstances. [M.S. 127.29, subd. 1]

Suspension

A student is generally entitled to notice and a meeting with the administration where he or she will be informed of the grounds for suspension before being suspended for one to five days. [M.S. 127.27, subd. 10] If the student poses a serious danger he or she can be suspended for up to 15 days, provided the school implements an alternative education program for him or her for any suspension over five days. [M.S. 127.27, subd. 10] The U.S. Supreme Court has declared that suspending a student from a public school gives rise to procedural due process requirements including written notice of the charges, an explanation of the evidence the authorities have, and an opportunity for the student to present his or her side of the story. These requirements do not include the right to counsel, a right to confront and cross-examine witnesses, or a right to call the student's own witnesses. Goss v. Lopez, 419 U.S. 565 (1975).

Expulsion/Exclusion

If a student is subject to expulsion (the precluding of an enrolled student from attending school for up to one year) or exclusion (the preventing of a prospective student from enrolling in school for up to one year), he or she is entitled to notice from the administration and to information regarding his or her attendance rights including the right to a formal hearing and appeal. [M.S. 127.27, subds. 4 and 5; 127.31; 127.32; 127.33] The school may be required to notify the student within ten days of termination of the dismissal period. [M.S. 127.37]

Removal from Class

If a student willfully engages in disruptive, dangerous and unsanctioned conduct, a school official may prohibit that student from attending class for up to three class periods. This is not considered dismissal under the Pupil Fair Dismissal Act. [M.S. 127.27, subd. 2; 127.40; 127.41]

PARTICIPATION IN ATHLETICS

State Discrimination Law

All educational institutions are required to provide equal opportunity for both sexes to participate in athletic programs. Depending upon the grade level, past circumstances, extent of interest and the particular sport, sports programs may offer single sex teams in some cases. [M.S. 126.21]

Federal Discrimination Law

Title IX of the Education Amendments of 1972, which prohibits sex discrimination in federally assisted interscholastic athletic opportunities for male and female students, specifies what educational institutions must do in order not to be subject to a cut-off of federal funds. [Nondiscrimination on the Basis of Sex in Education Programs and Activities Receiving or Benefitting from Federal Financial Assistance, 20 U.S.C. §§1681-1686]

Equal Protection Clause

Female athletes alleging sex discrimination in athletic programs have invoked the equal protection clause of the fourteenth amendment in asserting their claim that rules barring them from male athletic teams or treating female teams differently from male teams deny female athletes equal protection of the law. While courts generally agree that the equal protection clause requires

that females be permitted to try out for male teams in contact and non-contact sports, they are unwilling to find a right for females to participate on male teams when there is a separate female team available. See, e.g. Brendan v. Independent School District 742, 477 F.2d 1292 (8th Cir. 1973); Leffel v. Wisconsin Interscholastic Athletic Association, 444 F.Supp. 1117 (E.D. Wisc. 1978); O'Connor v. Board of Education, Dist. #23, 645 F.2d 578 (7th Cir., 1980).

HANDICAPPED CHILDREN

Education for all Handicapped Children Act of 1975; P.L. 94-142

The Act, passed by Congress in 1974, provides federal funding to states and local educational agencies for expenses incurred in providing special education and related services to handicapped school age children who qualify for assistance under the Act's eligibility provisions. In order to be eligible for funding, states must have a "right to education" policy, establish priorities for services, and assure that handicapped children and their parents are guaranteed procedural safeguards in decisions affecting the children's education. States are held accountable for the expenditure of these funds. The State Department of Education is responsible for assuring that all handicapped children within the state receive a free appropriate public education. [20 U.S.C. §§1401-1454, et seq.]

Availability and Procedural Requirements Under State Law

Each school district is required to provide appropriate nondiscriminatory instruction and services for handicapped children between the ages of three and 21 through completion of secondary school. [M.S. 120.03; 120.17, subd. 1]

State law guarantees procedural safeguards and parental participation in the assessment and educational placement of handicapped children. [M.S. 120.17, subds. 3a and 3b]

PUBLIC SCHOOL FEE LAW

Prohibited Fees

Public school education is free to all eligible students. School boards may not charge fees for necessary goods and services such as instructional materials and supplies, transportation, required library books, or required school activities. [M.S. 120.72; 120.73; 120.74.]

Authorized Fees

School districts may require students to pay for certain school-related costs specified in statute, such as fees for extracurricular activities, security deposits, personal athletic equipment, supplementary field trips, musical instruments, and personal stationery supplies. [M.S. 120.73; 120.75]

ACCESS TO INFORMATION

Student's Right to Inspect

A student may inspect or copy any public or private educational data concerning that student unless certain exceptions apply, except for parental financial records filed with the school. [M.S. 13.03, 13.04, 13.32, subd. 1]

Parent's Right to Inspect

If a student is a minor, his or her parents may inspect public or private data concerning their child unless, at the request of the minor, the responsible authority determines that it is in the best interest of that minor that the information be withheld. [M.S. 1302, subd. 8]

RIGHTS OF NON-PUBLIC SCHOOL PUPILS

Educational Materials and Pupil Support Services

School districts are required to provide nonpublic school pupils with textbooks, individualized instructional materials, and standardized tests, all of which must be secular in nature and cannot be used for religious instruction or worship. In addition, a district must provide the same health services to pupils of nonpublic schools as it provides to public school pupils. Nonpublic secondary pupils must also be offered guidance and counseling services by the public secondary schools. Allotments for nonpublic school costs are not to exceed average expenditures for the same public school services. [M.S. 123.931-123.937]

Transportation

School districts are required to provide "equal transportation" for nonpublic school pupils within the district's boundaries to the same extent they are required to provide transportation for public school pupils. A district may provide transportation to a nonpublic school located in another district, but the nonpublic school pays the cost of the transportation. [M.S. 123.78]

Tuition Tax Deduction

A taxpayer may deduct the costs of tuition, textbooks and transportation up to $650 for each dependent in grades K-6 and $1,000 for each dependent in grades 7 to 12. The costs of religious books and materials and the expenses of participating in extracurricular non-public school activities may not be deducted. [M.S. 290.089, subd. 2]

FIRST AMENDMENT RIGHTS

Freedom of Speech

Students retain their first amendment right to freedom of speech in school provided their speech does not result in "material disruption" of the education process. Tinker v. Des Moines Ind. Comm. School District, 393 U.S. 503 (1969). The test for determining the degree of disruption is "whether the manner of expression is basically incompatible with the normal activity of a particular place at a particular time."

In a 1986 decision the Supreme Court ruled that a student's speech containing "explicit sexual metaphors" is not protected by the first amendment. Bethel School District v. Fraser, 54 U.S.L.W. 5054 (1986).

Prayer in the Schools

The U.S. Supreme Court has declared the district-sanctioned recitation of a non-denominational prayer at the beginning of each school day a violation of the first amendment prohibition against establishment of religion. Engel v. Vitale, 370 U.S. 421 (1962). The Supreme Court recently ruled that a law authorizing a short period for "voluntary or silent prayer" is also unconstitutional, but indicated that allowing a moment of silence probably would not violate the Constitution. Wallace v. Jaffree, 105 S.Ct. 2479 (1985). Federal courts are split on whether an invocation and a benediction at graduation ceremonies violate the establishment clause. See e.g. Grossberg v. Deusebio, 380 F.Supp. 285 (E.D. Va. 1974).

Religious Observances

The Eighth Circuit Court of Appeals has held that it is not a violation of the first amendment's establishment clause for a school to observe holidays which have both a religious and a secular basis through programs containing music, art, literature and drama having religious themes and via the temporary display of religious symbols associated with religious holidays. Florey v. Sioux Falls School District 49-5, 619 F.2d 1311 (8th Cir. 1980), cert. denied 449 U.S. 987 (1980).

Access to Facilities for Religious Purposes

Two federal appellate courts have ruled that the use of public elementary and secondary schools by students for religious purposes violates the establishment clause of the first amendment. Brandon v. Board of Education of Guilderland Central School District, 635 F.2d 971 (2d Cir. 1980), cert. denied, 454 U.S. 1123 (1981); Lubbock Independent School Dist. v. Lubbock Civil Liberties Union, 669 F.2d 1038 (5th Cir. 1982), cert. denied, 459 U.S. 1155, (1983). However, a law was enacted by Congress which forbids secondary schools receiving federal funds from barring religious student groups from meeting at school if the school has a general policy of allowing student meetings. [20 U.S.C. 4071.] The Supreme Court has not yet issued a ruling that would resolve the conflict between these court decisions and the legislation.

Exemption-Compulsory Attendance

The United States Supreme Court has ruled that certain pupils may be exempt from the state compulsory attendance law if they can show that the law imposes an unnecessary burden on the right to free exercise of religion under the first amendment. Wisconsin v. Yoder, 406 U.S. 205 (1972). See also p. 14.

FOURTH AMENDMENT RIGHTS

Search and Seizure

The United States Supreme Court has ruled that the fourth amendment of the Constitution affords some protection to students, but permits school officials to search students if there are "reasonable grounds" for suspecting that a student has violated the law or school rules. New Jersey v. T.L.O., 105 S.Ct. 733 (1985). This is less stringent than the usual standard requiring a "warrant based on probable cause" used by the courts in adult criminal search and seizure cases.

FAMILY RELATIONS

With a few exceptions noted in this section and elsewhere in the guide, the statutes do not regulate relations between married parents and their children who live together. Statutes exist primarily to deal with needs that arise when a new family is being created--for example, by adoption--or when a family is changing form--for example, due to events like divorce, death, or a minor's marriage. For provisions regulating circumstances arising from neglect or abuse of children by family members see CRIMINAL VIOLATIONS AGAINST YOUTHS and the JUVENILE COURT section of Part II.

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ALL FAMILIES

Child's Residence

Parents choose the residence of an unmarried child under age 18. A child who leaves that residence without permission is considered a runaway and can be taken into custody. [M.S. 260.015, subd. 20; 260.165]

Housing Discrimination Against Families with Children

The Human Rights Act prohibits (1) refusal to rent or sell real estate to persons with children and (2) any unlawful restrictions against children in a real estate sale or rental advertisement. Various exceptions exist for owner-occupied, cooperative, and elderly housing units. [M.S. 363.01-363.03]

Emancipation of a Minor

"Emancipation" means that a minor has the same legal rights and obligations as an 18 year old adult. A minor can be emancipated by a legal marriage or by his or her parent's consent. State ex. rel. Scott v. Lowell, 78 Minn. 166, 80 N.W. 877 (1899); Minneapolis v. Orono, 212 Minn. 7, 2 N.W.2d 149 (1942)

Marriage by a Minor

A 16 year old may marry with parental consent. Anyone may marry at age 18. [M.S. 517.02]

DIVORCED PARENTS

Child Custody

After an annulment, dissolution, or legal separation, the court must order either sole or joint legal and physical custody of minor children. In deciding custody, the court must consider the best interests of the child and not prefer one parent over the other on the basis of the parent's sex. There is a presumption that joint legal custody is in the child's best interests. If the child is old enough the judge may ask her or his custody preference. [M.S. 518.17]

Changing Child's Residence

The child resides with the parent who has physical custody. If the noncustodial parent has visitation rights, the child can be moved out of state only with a court order or the noncustodial parent's consent. [M.S. 518.175, subd. 3]

Parent's Visitation Rights

In dissolution or legal separation proceedings, on request of the noncustodial parent, the court must grant visitation rights in the best interests of the child. The court may restrict visitation or deny it entirely, if it would endanger or impair the child. A parent's failure to pay support because of inability to do so is not sufficient cause to deny visitation. If one parent wrongfully denies the other's visitation rights, compensatory visitation time may be obtained by court order. [M.S. 518.175]

Grandparent's Visitation Rights

In all dissolution proceedings, the child's grandparent or great-grandparent may ask the court for reasonable visitation rights to an unmarried minor child. The rights may be granted if they do not interfere with the parent and child relationship. Visitation rights end if the child is adopted by someone other than a step-parent or grandparent. [M.S. 257.022]

DECEASED PARENTS

Appointing a Guardian for an Orphan

An unmarried minor's parent may appoint a guardian by will. A minor 14 years or older or an adult interested in the minor's welfare may object to the choice. [M.S. 525.6155; 525.616]

If parents do not name a guardian by will, the court may put the child under the guardianship of the Commissioner of Human Services, a licensed child placing agency, or an individual willing and able to take responsibility. [M.S. 260.242, subd. 1b(a)-(c)]

Guardianship ends when the child dies, is adopted, legally marries, or turns 18. [M.S. 525.6192]

UNMARRIED PARENTS

Child Custody/Visitation

The mother has sole custody until paternity is established either by the father's legally effective admission or by court action. If paternity is established, the father may petition the court for custody or visitation. If the child is old enough, the court may ask his or her custody preference. [M.S. 257.541, subd. 2(b)]

Establishing Parentage

The child, parent, or welfare agency may bring an action to establish the child's parentage. The parties may be required to have blood tests. An action to determine the existence of the father and child relationship as to a child who has no presumed father is not barred until one year after the child reaches the age of majority. [M.S. 257.51-257.74]

An alternative to legal action: A man is presumed to be the natural father of the child if he and the child's natural mother acknowledge his paternity in a writing signed by both of them and filed with the state registrar of vital statistics. [M.S. 257.34; 257.55, subd. 1]

ADOPTED CHILDREN

Required Consents

An individual aged 14 or older may be adopted only if she or he consents. [M.S. 259.24, subd. 3]

If an unmarried parent under 18 wants to place a child for adoption, he or she must be offered consultation with an attorney, clergyman, or physician before consenting to the adoption. The consent of the minor's parents or guardian, if any, also is required. If the minor has no parent or guardian to give consent, the Commissioner of Human Services may do so. [M.S. 259.24, subd. 2]

Adoptee's Access to Original Birth Certificate

An adopted person 21 or older may request the information on his or her original birth certificate. The Commissioner of Human Services must try to notify each parent identified on the certificate of the request. If the parents agree, the information is disclosed.

If the Commissioner cannot notify a parent and if the parent has not filed a consent to disclosure, the information may be disclosed as follows:

- If the person was adopted before August 1, 1977, he or she may petition for disclosure, which will be granted if the court determines that it is more beneficial than nondisclosure.

- If the person was adopted on or after August 1, 1977, the information must be released unless the parent filed an affidavit requesting nondisclosure.

If a parent dies without revoking a nondisclosure request, the adopted person may petition the court for disclosure. The petition will be granted if the court determines that disclosure would be more beneficial than nondisclosure. [M.S. 259.49]

Adoptee's Access to Other Information

Adopted persons age 19 and older may ask the adoption agency to help determine whether a biological parent or adult sibling wants to have contact or share information. The agency will also transmit health information relevant to any genetically related parties to an adoption. A reimbursement fee may be charged for these services. [M.S. 259.47]

HEALTH AND SOCIAL SERVICES

Minors' access to health care services is dependent upon the parents or guardians who are expected to act in the best interest of the child. Exceptions are made for older children who are financially independent, who have married or who have borne children themselves. Minors' access to social services is specifically authorized by a number of state laws that require counties to provide day care subsidies for currently eligible children, and child welfare and protective services for children at risk.

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MINORS' CONSENT FOR HEALTH SERVICES

Marriage or Giving Birth	Any minor who has been married or has borne a child may give effective consent to medical, mental, dental or other health services for his or her child, and for himself or herself. [M.S. 144.342]
Living Apart from Parents and Financially Independent	Any minor who is living apart from his or her parents or legal guardian, with or without consent to do so and regardless of the duration of such separate residence, and who is financially independent, regardless of the source or extent of his or her income, may give effective consent to medical, dental, mental or other health services for himself or herself. [M.S. 144.341]
Pregnancy, Venereal Disease Alcohol or Drug Abuse	Any minor may give effective consent for medical, mental or other health services to determine the presence of or to treat pregnancy, venereal disease, alcohol and other drug abuse. [M.S. 144.343, subd. 1]
Emergency Treatment	Medical, dental, mental and other health services may be provided to minors without parental consent when, in a professional's judgment, treatment should be given without delay. [M.S. 144.344]
Representations to Persons Rendering Service	If a minor represents that he or she may give effective consent but in fact may not do so, his or her consent is effective if relied upon in good faith by the person rendering service. [M.S. 144.345]
Information to Parent	A professional may inform a minor's parent of any medical treatment given, whenever the professional determines it is necessary to the health of the minor. For purposes of access to health records of a minor, the term "patient" includes a parent or guardian, or a person acting as a parent or guardian in the absence of a parent or guardian, except in cases where minors have received treatment related to pregnancy, venereal disease, alcohol and other drug abuse. [M.S. 144.335 and 144.346]

Financial Responsibility

A minor who gives effective consent is financially responsible for services rendered. [M.S. 144.347]

Blood Donations

Any person 17 or over may donate blood in a noncompensatory blood program without obtaining parental consent. [M.S. 145.41]

Anatomical Gifts

Any person of sound mind who is at least 18 or any minor, with written consent from parents or legal guardian, may donate all or any part of his or her body for medical purposes. [M.S. 525.922]

Abortion

Because of the federal court case still pending in Hodgson v. State of Minnesota, No. 3-81-Civ-538 (D. Minn. filed July 30, 1981), the following law is in effect for minors seeking abortions.

If a minor elects not to allow notification to a parent, any court of competent jurisdiction shall determine after an appropriate hearing, whether the minor is mature and capable of giving informed consent to the proposed abortion. If the minor is determined to be mature, the court shall authorize a physician to perform the abortion without notification. If the minor does not claim to be mature, the court shall authorize the abortion without notification upon a determination that it would be in the minor's best interests.

The minor may be represented in court by counsel and a guardian ad litem which the court may appoint.

The court proceedings shall be confidential and promptly decided. The judge shall write specific factual findings and legal conclusions supporting the decision.

An expedited confidential appeal shall be available to any minor for whom the court denies an order authorizing an abortion without notification. An order authorizing an abortion without notification is not subject to appeal. [M.S. 144.343, subd. 6]

Voluntary Admission

Any person 16 years of age or older may request informal admission to a treatment facility for observation or treatment of mental illness, chemical dependency or mental retardation, and may consent to treatment for emergency or short-term acute care. Any person under the age of 16 may be admitted as a "voluntary" patient upon the signature of a parent or guardian so long as there is some independent review of the placement in accordance with Parham v. J.R., 442 U.S. 584(1979); M.S. 253B.03, subd. 6(4); 253B.04, subd. 1.

Insurance

Minors' rights to insurance benefits depend on the purchase of insurance coverage by a parent or guardian. The purchase of family coverage will insure any children up to age 19 years and dependent children of any age. [M.S. 62A.03]

SOCIAL SERVICES

Child Welfare

Counties are required to provide child welfare services to assure protection and financial assistance for children confronted with social, physical or emotional problems. [M.S. 393.07]

For a full description of the special eligibility requirements and benefits of the major public assistance programs, see Minnesota Welfare: A Guide for Legislators Research Department, Minnesota House of Representatives.

Child Care

Child care services for income-eligible children are funded through county social service agencies using community social service funds or (in certain counties) Child Care Sliding Fee Funds. [M.S. 245.84 and 268.91]

Community Social Services

County boards are responsible for the administration, planning, and funding of social services. They are required to provide services to children who are abused, neglected, dependent, mentally retarded, chemically dependent, or income-eligible and in need of day care. The county of financial responsibility for a minor is the county in which her or his parents reside. [M.S. 256E.08]

Foster Care Review

Social service agencies are required to conduct administrative reviews of foster care placements and to seek court review, where applicable, in order to assure that children have been appropriately placed and that case plans are being implemented. [M.S. 257.071]

Subsidized Adoption Program

Adoption subsidies are available to eligible families desiring to adopt "difficult-to-place" children. This state program was established in 1979 and the state law was amended in 1982 so that its provisions would conform with 42 U.S.C. §§670-676, the federal Foster Care and Adoption Assistance Act. The Department of Human Services administers both the state program and the federal program through the county welfare agencies. [M.S. 259.40]

Child Abuse Reporting

State law requires certain professionals to report information if they know or have reason to believe a child is being abused. Reports are made to welfare or law enforcement personnel. Failures to report are prosecuted by the county attorney. Local welfare agencies are required to investigate all reports. Special procedures have been enacted in regard to interviewing alleged child abuse victims. Agencies must also provide protective services where necessary. One form of protective service is removing the child from the home and placing him or her in a foster care setting. [M.S. 626.556]

Medical Neglect

Withholding medically indicated treatment from an infant with a life-threatening condition is defined as a form of neglect that must be reported under the Child Abuse Reporting Act. Required treatment is specified and circumstances are listed in which treatment can be limited.

If a report of medical neglect is received, the local welfare agency must consult the hospital and parents and, if necessary, obtain a court order for an independent medical examination and treatment of the infant. [M.S. 260.015, subd. 10; 626.556, subd. 10c]

Child Abuse Prevention Trust Fund

Services and education programs designed to help prevent child abuse before it occurs may be developed and offered by private and public organizations at the local level and financed through grants obtained from the state Child Abuse Prevention Trust Fund. The Trust Fund is funded by a surcharge on birth certificate filings and by federal, state and private contributions and will eventually have a balance of $20 million. [M.S. 299A.20 to 299A.27]

CRIMINAL VIOLATIONS BY YOUTHS

Minnesota law prohibits young people from performing certain activities that adults are allowed to do, and imposes penalties for such conduct. The rationale behind these laws is that, due to the harmful nature of the activity and the immature judgment abilities of young people, it is necessary to place stricter controls on youths than adults.

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Purchase and Consumption of Alcoholic Beverages
(Misdemeanor)

No person under 21 years of age may purchase alcoholic beverages, or possess or consume alcoholic beverages at a place other than his or her parent's home. Additionally, any person under 19 who purchases or attempts to purchase alcohol by using a driver's license can lose his or her license for up to 30 days. [M.S. 171.171 and 304A.503.]

Use of Tobacco or Tobacco-Related Devices
(Petty Misdemeanor)

No minor may use tobacco or tobacco-related devices such as cigarette papers or pipes. [M.S. 609.685]

Possession of a Pistol
(Gross Misdemeanor)

No minor may possess a pistol unless the minor (a) is in the actual presence or under the direct supervision of a parent or guardian, (b) is possessing it for military drill purposes, (c) is using it in an approved and supervised target practice range or (d) has completed a state-approved marksmanship and safety course. [M.S. 624.713]

Possession of a Firearm
(Misdemeanor)

No child under 16 years of age may possess a firearm or airgun for hunting, target practice or any other purpose, unless he or she is either accompanied by a parent or guardian or is over 14 and has a firearm safety certificate from the Department of Natural Resources. [M.S. 97.83 and 97.55]

Possession or Use of Toxic Glue
(Misdemeanor)

No person under 19 years may use or possess toxic glue with the intent of inducing intoxication, excitement or stupefaction of the nervous system (i.e., "glue-sniffing") except on doctor's orders. [M.S. 145.39]

Possession or Use of Tear Gas
(Misdemeanor)

No person under the age of 16 may use or possess tear gas except by written permission of a parent or guardian. [M.S. 624.731]

Possession or Use of Electronic Incapacitation Device
(Misdemeanor)

No person under the age of 18 may use or possess an electronic incapacitation device ("stun gun"). [M.S. 624.731]

CRIMINAL VIOLATIONS AGAINST YOUTHS

There are a number of Minnesota laws that make it a crime to commit certain acts with or upon children. These criminal laws are designed to protect young people in a variety of situations where, due to youth and immaturity, children are considered particularly vulnerable to physical or emotional harm.

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PORNOGRAPHY LAWS

Child Pornography (Felony)

It is a crime to employ, use or permit a minor to pose or model for a sexual performance, or to disseminate or distribute for profit pictures or works depicting minors in a sexual performance. [M.S. 617.246]

(Gross Misdemeanor)

It is a crime to disseminate or possess photographic representations of sexual conduct involving a minor. [M.S. 617.247]

Dissemination of Obscene Works to Minors (Gross Misdemeanor)

No person may knowingly sell or rent obscene pictures or films to a minor, or show or admit minors to see such films for monetary consideration. [M.S. 617.293-617.294]

SEXUAL ABUSE LAWS

Criminal Sexual Conduct (Felony)

It is a crime for any person to engage in sexual conduct with a minor who is less than 13 years of age; a minor between the ages of 13 and 18 who is a certain number of years younger than the actor and/or under the actor's authority and control; or a minor who is under 16 and with whom the actor has a "significant relationship" as defined by law.

It is a crime for an adult to engage in sexual conduct with a minor when that person has a significant relationship to the minor, or is the minor's guardian. "Significant relationship" includes relationships by blood, marriage and adoption but excludes relationships more distant than first cousins. [M.S. 609.341-609.345]

Prostitution (Felony)

It is a crime for any person to solicit, induce, promote or receive profit from the practice of prostitution by a minor or to hire a minor for sexual purposes. The penalty for the offense varies depending on the age of the minor, with the highest penalties reserved for the prostitution of a minor under the age of 13. It is also a crime

for a non-relative to permit a minor to reside with him or her without parental consent when the nonrelative knows or has reason to know that the minor is engaging in prostitution. [M.S. 609.321 to 609.324]

Sexual Solicitation
(Felony)

It is a crime for an adult to solicit (i.e. command, entreat, or attempt to persuade) a child under the age of 15 to engage in sexual conduct. Mistake as to age is not a defense to this crime. [M.S. 609.352]

PHYSICAL AND EMOTIONAL ABUSE LAWS

False Imprisonment
(Felony)

No person may intentionally restrain a minor who is not the person's own child, without the consent of the minor's parent or legal custodian.

(Gross Misdemeanor)

No parent, guardian or caretaker may cause a minor to suffer substantial emotional harm by subjecting him or her to unreasonable physical confinement or restraint, if done in a cruel manner and if excessive under the circumstances.

(Felony)

If substantial bodily harm results from the unreasonable restraint, the offense becomes a felony. [M.S. 609.255]

Malicious Punishment
(Gross Misdemeanor)

No parent, guardian or caretaker may commit an intentional act or series of acts against a minor which evidence unreasonable force or cruelty and which cause substantial emotional harm to the minor.

(Felony)

If substantial bodily harm results from the person's actions, the offense becomes a felony. [M.S. 609.377]

Neglect
(Gross misdemeanor)

A parent, guardian or caretaker may not willfully neglect a minor child when reasonably able to take care of him or her, thereby substantially harming the child's physical or emotional health, and may not knowingly permit the continuing physical or sexual abuse of the child. [M.S. 609.378]

Nonsupport (Misdemeanor)
No person legally obligated to provide for the support of a child in necessitous circumstances under the age of 16 may knowingly fail to do so without lawful excuse.

(Felony)
The offense becomes a felony if the nonsupport continues for more than 90 days. [M.S. 609.375]

Kidnapping (Felony)
No child under 16 years of age may be kidnapped without the consent of the child's parents or legal custodial. Unlike the situation with adult kidnapping victims, consent of a child victim to the kidnapping is not a defense. [M.S. 609.25]

Parental Abduction (Felony)
No person may conceal a minor child for the purpose of depriving a parent or other custodian of his or her parental, custodial or visitation rights to the child, nor may a person abduct a minor child for the purpose of depriving a parent of his or her parental rights. [M.S. 609.26]

SAFETY LAWS

Unused Refrigerator or Container (Misdemeanor)
It is unlawful to allow an unused refrigerator or other container to be exposed and accessible to children if it is large enough to contain a child and has doors which fasten automatically when closed. [M.S. 609.675]

Tobacco Sales (Misdemeanor)
It is unlawful to furnish tobacco or tobacco-related devices, such as cigarette papers or pipes, to a minor. [M.S. 609.685]

Tear Gas Sales (Misdemeanor)
No one may knowingly sell or furnish tear gas to a child under 16 years of age without the written permission of the child's parent or guardian. [M.S. 624.731]

Electronic Incapacitation Device Sales (Misdemeanor)
No one may knowingly sell or furnish an electronic incapacitation device ("stun gun") to a child under 18 years of age. [M.S. 624.731]

Toxic Glue Sales (Misdemeanor)
No one may sell toxic glue to a person under 19 years of age, unless the glue is contained in a packaged model construction kit. [M.S. 145.38]

Child Restraint Seats (Petty Misdemeanor)
A parent or guardian of a child under four years of age must install a federally-approved child restraint seat and transport the child in it while using the parent's or guardian's motor vehicle. [M.S. 160.685]

DRUG-RELATED LAWS

Drug Distribution to Minors (Felony or Gross Misdemeanor)
An adult who distributes a prohibited drug to a minor is subject to double the applicable felony or gross misdemeanor penalty for drug distribution if the adult is at least three years older than the minor. [M.S. 152.15, subd. 4]

Drug Possession on School Property (Felony or Gross Misdemeanor)
An adult who possesses prohibited drugs on school property (excluding post-secondary schools) is subject to double the applicable felony or gross misdemeanor penalty for drug possession. [M.S. 152.15, subd. 4a]

Drug Paraphernalia Sales (Gross Misdemeanor)
An adult may not knowingly deliver drug paraphernalia to a minor who is at least three years his or her junior. [M.S. 152.094]

MISCELLANEOUS CHILD PROTECTION LAWS

Sale of Alcoholic Beverages (Misdemeanor)
No one may sell or give alcoholic beverages to a person under 21 years of age. [M.S. 340A.503(2) and 340A.702]

Dance Halls (Misdemeanor)
A public dance hall operator may not admit any unmarried person under 16, unless accompanied by a parent or guardian, or any unmarried person between 16 and 18, unless he or she is either accompanied by a parent or guardian or has the parent's or guardian's written consent. [M.S. 624.49]

Pawnbrokers and Junkdealers (Misdemeanor)

No pawnbroker, junkdealer or second-hand dealer is allowed to make a loan or pledge to, or purchase property from a minor, without the written consent of the minor's parent or guardian. [M.S. 609.81 and 609.815]

Abduction for Marriage (Gross Misdemeanor)

No person may take a minor for the purpose of marriage without the consent of the minor's parents or legal custodian. [M.S. 609.265]

Contributing to Delinquency (Misdemeanor)

It is a misdemeanor for any person to encourage, cause or contribute (1) to the neglect or delinquency of a minor or (2) to the commission of status offenses by the minor. [M.S. 260.315]

MISCELLANEOUS AGE PROVISIONS

This section describes rights granted on the basis of age, in addition to those covered in other sections of the guide.

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Access to Records

A minor and his or her parent or guardian may examine government data on the minor classified as either public or private, with two exceptions:

- Parental financial data filed with a school is not available to a minor.
- At the minor's request, data will be withheld from a parent or guardian if the government agency determines that withholding is in the minor's best interest. [M.S. 13.02, subd. 8; 13.32, subd. 4]

Driver's License

A minor aged 15 or 16, and otherwise qualified to hold a driver's license, may get a restricted license for farm work or personal or family medical reasons. [M.S. 171.041; 171.042]

Minors aged 16 and 17 may be issued driver's licenses only after passing an approved course in driver education. The license application must be approved by either parent when both reside with the minor, or by the custodial parent or guardian. [M.S. 171.04(1)]

A minor may not drive a vehicle that carries passengers for hire. [M.S. 171.322]

Fishing and Hunting Licenses

Residents under 16 may fish without a license. [M.S. 97A.451, subd. 2]

Residents under 13 may hunt small game without a license. Residents aged 13 to 15 may hunt small game without a license if they have a valid firearm safety certificate. Residents under 14 must be accompanied by a parent or guardian while hunting. No hunting license may be issued to any resident under 16, except those under 16 who have a firearms safety certificate may purchase a big game license. [M.S. 97A.0451, subds. 3 and 4]

Office Holding

An individual must be 21 in order to hold state or local office. [Minn. Const., Art. VII, Sec. 6]

Voting

An individual may vote at age 18. [Minn. Const., Art. VII, Sec. 1]

PART II: THE COURTS

Minnesota law makes distinctions between adults and minors not only with regard to substantive rights and responsibilities, as described in Part I, but also with respect to the type of court procedures under which these rights and responsibilities are judicially decided. Part II explains these court procedures in three sections.

Section 1 (Civil Adult Court) describes procedures applicable to minors who are parties or witnesses to civil lawsuits in adult court.

Section 2 (Criminal Adult Court) describes procedures applicable to minors who are involved in criminal cases in adult court as witnesses or parties, and also explains certain procedural protections pertaining to the care and custody of minors found to have committed criminal acts.

Finally, Section 3 (Juvenile Court) describes the purposes and procedures of the juvenile court, the court most commonly used for hearing and deciding cases involving criminal acts committed by minors, and cases involving children in need of protection or care by the state.

CIVIL ADULT COURT

This section describes the rights and restrictions affecting minors as parties or witnesses in civil lawsuits in adult court.

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MINOR PARTIES AND WITNESSES IN CIVIL LAWSUITS

Parental Liability: Children's Torts and Contracts

The parent or guardian of a minor who willfully causes personal injury or property damage is liable for up to $500 damage. [M.S. 540.18]

There is no Minnesota law indicating whether parents are liable for a minor's contracts.

Parents' Liability to Children

Children may sue their parents for torts. Parents are held by case law to a "reasonable parent" standard in determining whether they are negligent. Anderson v. Stream, 295 N.W.2d 595, 601 (1980).

Injury to Minors

A parent may bring suit to recover for injury done to a minor child. [M.S. 540.08]

Statute of Limitations

The statute of limitations does not run while a person is a minor, so a minor with a legal right of action has until he or she is 19 to file suit if parents do not do so, with one exception. The statute stops running in a medical malpractice case either seven years after the action arises or when the plaintiff turns 19, whichever is first. [M.S. 541.15]

Minors as Witnesses

Minors are not competent witnesses in civil suits if they are under the age of ten and do not appear able to remember or recount facts accurately. [M.S. 595.02, subd. 1(f)]

CRIMINAL ADULT COURT

This section describes procedures applicable to minors who are parties or witnesses in criminal cases in adult court, or who are confined in a correctional facility.

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MINOR PARTIES AND WITNESSES IN CRIMINAL CASES

Criminal Responsibility

Children under the age of 14 are considered legally incapable of committing crimes. [M.S. 609.055]

Children between the ages of 14 and 18 accused of criminal acts may be referred for adult criminal prosecution in the manner provided in the juvenile code. (See p. 25)

Admissibility of a Child's Hearsay Statements in Child Abuse Cases

Hearsay statements made by a child sex or physical abuse victim under 10 years of age may be admitted into evidence in abuse cases if (a) the statement is shown to be reliable and (b) the child either testifies in person or is unavailable as a witness and there is corroboration of the abuse. [M.S. 595.02, subd. 3]

Testimony by Closed Circuit TV or Videotape

Child abuse victims under 10 years old may be allowed to give their testimony over closed-circuit TV or on videotape, if the court decides that use of these devices is necessary to allow the child to testify without undue psychological trauma. [M.S. 595.02, subd. 4]

Minors as Witnesses

Minors are not competent witnesses in criminal cases if they are under the age of ten and do not appear able to remember or recount facts accurately. [M.S. 595.02]

Child Sex Abuse Victim

No data in records or reports relating to criminal child sex abuse complaints or indictments that specifically identify the child are accessible to the public, except by court order. [M.S. 609.3471] Furthermore, when a child abuse victim is interviewed by the government, a record must be made of the time, place and substance of the interview. [M.S. 626.561]

Exclusion of Public From Trials Involving Children

The public may be barred from the courtroom by the judge during all or part of a child sex abuse trial if necessary to ensure fairness or protect the child. [M.S. 631.045]

Exclusion of Children From Criminal and Scandalous Trials

No person under age 17 may be present at a criminal prosecution unless involved or directly interested in the case. [M.S. 631.04]

Additionally the court is permitted to exclude minors whose presence is not necessary from trials involving obscene or scandalous matters. [M.S. 546.37]

Care and Custody of Juvenile Offenders

Minors may not be detained or confined in the same area as adult prisoners while in jail or lockup. [M.S. 636.07 and 641.14]

The Commissioner of Corrections is prohibited from placing in a penal institution any juvenile referred to him by the juvenile court. [M.S. 242.14]

It is a misdemeanor for any person to abduct, conceal or improperly interfere with any juvenile inmate in a juvenile correctional facility. [M.S. 242.47]

JUVENILE COURT

This section provides a general overview of the juvenile justice system in Minnesota. First, the purpose and jurisdiction of the juvenile courts is described with an explanation of key terms and concepts necessary for understanding the function of the court. Next, the juvenile court process is explained: first, for delinquency and other offenses; second, for child protection cases.

All of the statutory provisions discussed in this chapter are contained in M.S. Chapter 260. Other provisions are found in the Juvenile Court Rules.

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PURPOSE AND JURISDICTION OF JUVENILE COURT

The juvenile court in Minnesota is authorized to hear and decide two main categories of cases:

- those involving juveniles who commit unlawful acts, and
- those involving child protection matters raised by the inability or failure of a parent or other lawful custodian to provide a minor with necessary care and supervision.

In addition, the juvenile court is responsible for the following legal actions:

- terminations of parental rights to a child. Parental rights may be terminated by the court either (a) for good cause with parental consent, or (b) if the child has been abandoned, continuously neglected, or if the parent's conduct shows a clear unfitness to be a parent;
- juvenile marriages;
- adoptions;
- waivers of parental notification sought by minor women wishing to terminate a pregnancy;
- persons (including adults) alleged to be contributing to the neglect or delinquency of a minor. All juvenile courts may order relief of a civil or injunctive nature, but only in counties having over 200,000 in population may the juvenile court hear and decide a misdemeanor criminal charge in these cases;
- appointments and removals of guardians for minors; and
- periodic review of a child's foster care status.

Records of juvenile court actions are accessible to the minor and his or her parents or guardian, but may be seen by others only with a court order. All proceedings conducted by the juvenile court are closed to the public with one exception: hearings involving minors 16 years old or older who are accused of a felony offense are open to the public.

JUVENILES WHO COMMIT UNLAWFUL ACTS

As mentioned earlier, one important type of case generally assigned to the juvenile court involves minors who engage in unlawful conduct. In contrast to the adult courts, the juvenile proceeding in this context is not a criminal proceeding designed to fix criminal responsibility and punishment but, rather, is a civil proceeding designed to protect the child from the consequences of his or her own conduct, rehabilitate him or her and at the same time, promote the public safety.

Juveniles committing unlawful acts fall into one of the following categories, depending on the nature of the conduct involved:

- Delinquents: children who commit acts which would be unlawful if committed by an adult;*
- Status offenders: children who engage in conduct which is unlawful for them, but not unlawful for adults, such as running away from home, school truancy, incorrigibility, drinking and smoking;
- Juvenile traffic offenders: children who violate traffic laws. In certain cases, depending on the age of the child and the nature of the traffic offense, the matter may be handled by the adult court rather than the juvenile court.

Referral for Adult Prosecution

In some cases, the juvenile court may decide that a child over the age of 14 accused of a particularly dangerous offense and/or having engaged in criminal conduct in the past would be handled more appropriately in the adult court. These alleged delinquents may be "referred for adult prosecution" upon motion by the prosecutor if the juvenile court finds, after a hearing, that there is probable cause to believe the child committed the offense and that there is clear and convincing evidence that the child is not suitable treatment or the public safety is not served by handling the case in juvenile court. Once a child has been referred to the adult court for prosecution he or she may be prosecuted, convicted and sentenced as if he or she were an adult.

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* However, under Minnesota law, children who commit traffic offense are not labelled as delinquents, even if the conduct would have been unlawful if committed by an adult. Similarly, children found in possession of a small amount of marijuana are classified as status offenders rather than delinquents.

Juvenile Court Dispositions

Assuming the juvenile court retains jurisdiction over the alleged juvenile offender, and, after a hearing, determines that the child did engage in the unlawful conduct, the court has available to it a variety of dispositions, including: fines, probation, counseling, placement out of the home, loss of driver's license, restitution or community service, and (for delinquents only) commitment to the commissioner of corrections for placement in a juvenile detention facility.

CHILD PROTECTION CASES

The other major category of cases the juvenile court hears are those involving children whose parents or guardians cannot or do not provide them with necessary supervision or care. These children are classified by the law as either "dependent" or "neglected," depending on the facts involved. A "dependent child" is one who is deprived of parental support or care because of a parent's death, continued absence or physical, emotional or mental incapacity, or who needs special care which a parent is unable to provide. A "neglected child" is one whose parents or guardian have failed to provide him or her with necessary food, clothing, shelter or medical care or have failed to protect the child from dangerous actions or conditions when reasonably able to do so.

In cases involving dependent or neglected children, the juvenile court is directed by law to secure for each child the care and guidance that will best serve the child's welfare and the interests of the state. In so doing, the court must observe the following policies wherever possible:

- to maintain the child in his or her own home;
- to provide judicial procedures that protect the welfare of the child;
- to preserve and strengthen the child's family ties;
- to remove the child from parental custody only when his or her welfare or safety cannot otherwise be adequately safeguarded; and
- when the child is placed out of the home, to secure care and discipline for him or her similar to that which should have been given by the parents.

Types of Dispositions

The types of dispositions available to the court to achieve these purposes are: placing the child under protective supervision while permitting the child to remain at home; placing the child out of the home in a foster care setting, with parental visitation unless visitation would prevent the court's objectives or endanger the child; ordering the abuser out of the home in cases of domestic child abuse; or ordering that the child receive special treatment for his or her mental or physical health. If the court's order for mental health treatment is based on a diagnosis made by a treatment professional, the court may order that the diagnosing professional not provide the treatment, if such an order is in the child's best interest. Dispositional orders are for a fixed period of time not to exceed one year and may be renewed or modified by the court.

COURT PROCESS FOR DELINQUENCY AND OTHER OFFENSES

The following is a summary of the major stages of the juvenile court process as it relates to children alleged to have committed unlawful acts.

Apprehension

A child may be apprehended and taken into immediate custody by the police or a probation or parole officer before any court papers are filed, if the child is:

- found in dangerous surroundings,
- a runaway,
- the subject of an arrest warrant,
- subject to arrest, or
- a parole/probation violator

Pretrial Detention

No child taken into custody may be held for longer than 24 hours without a court order unless he or she was found in dangerous surroundings or apprehended pursuant to a warrant. In those situations, an alleged delinquent can be held up to 36 hours in a secure or shelter care facility, and others can be held up to 72 hours in a shelter care

facility. In order to detain children longer than these time periods, the court must hold a detention hearing and find that pretrial detention is necessary. Then, it must review the propriety of this continued detention every eight days until the child's case is heard and decided.

Filing of Petition

The juvenile court process is begun officially by the filing of a petition with the court. Delinquency petitions are prepared and filed by the county attorney; other petitions may be filed by a peace officer, or in the case of truancy, by an attendance officer.

Arraignment Hearing

At the arraignment hearing, the child is given the opportunity to admit or deny the allegations contained in the petition. This hearing must be held within 20 days of the date on which the petition is served or, if the child is in detention, within five days of the time he or she was taken into custody.

If the child denies the allegations in the petition or if the court refuses to accept the child's admission, an adjudicatory hearing is scheduled to take place within 30 or 60 days, depending on whether or not the child is in detention. If the child admits to the allegations and the court accepts the admission, the court will schedule a dispositional hearing.

Reference for Adult Prosecution

As was mentioned earlier, a hearing may be held by the juvenile court judge, upon motion by the prosecutor, as to whether or not a particular alleged delinquent over the age of 14 should be referred to the adult court for criminal prosecution. In ordering the reference, the court must find that there is probable cause that the child committed the charged offense and that there is clear and convincing evidence that the child is not amenable to treatment or that the public safety would not be served by handling the case in the juvenile system.

Adjudicatory Hearing

This hearing is the equivalent of a trial in adult court. At the conclusion of the hearing the court has between 15 and 30 days to decide whether or not the allegations in the petition have been proven beyond a reasonable doubt. If the allegations have not been proven the court must dismiss the petition. If they have been proven, the court may either (1) adjudicate the child as a delinquent or an offender and schedule a disposition hearing or (2) withhold adjudication for up to 180 days pending examination or counseling of the child or pending probationary supervision.

Disposition Hearing

This hearing is similar to a sentencing hearing in adult court. It is designed to be informal and to allow all participants the opportunity to be heard. Based on the information received, the judge may order any one of the dispositions summarized above.

Major Constitutional Rights of a Child in Juvenile Court

Until fairly recently, children who come before the juvenile court on charges of delinquency were not accorded the same constitutional rights as adults charged with criminal offenses. The rationale for this distinction was that juvenile delinquency cases were not designed to fix criminal responsibility, guilt and punishment but, rather, were designed to protect and rehabilitate the child.

Since 1966, however, the U.S. Supreme Court has recognized that juvenile court proceedings can and do affect the rights of children to "life, liberty and the pursuit of happiness" and, therefore, that juvenile court hearings and procedures must measure up to the essentials of due process and fair treatment.

Thus, during the late 1960's and early 1970's, the U.S. Supreme Court found, in a series of cases, that alleged delinquents have the following constitutional rights in juvenile adjudicatory hearings:

- right to written advance notice of the adjudicatory hearing, allowing adequate time to prepare for it
- right to counsel

- privilege against self-incrimination
- right to cross-examine witnesses In re Gault, 387 U.S. 1 (1967)
- findings of delinquency must be based on proof beyond a reasonable doubt if the offense is one that would be unlawful if committed by an adult. In re Winship, 397 U.S. 358 (1970)
- the double jeopardy clause of the Fifth Amendment prohibits prosecution in adult court of a juvenile if an adjudicatory hearing has been held on the same matter in juvenile court. Breen v. Jones, 421 U.S. 519 (1975).

In contrast, however, the U.S. Supreme Court held in McKeiver v. Pennsylvania, 403 U.S. 528 (1971) that a jury trial is not constitutionally required in the adjudicative phase of a juvenile court proceeding, because juries are not essential to fundamental fairness in fact-finding procedures. Several states (not including Minnesota) have extended the right to trial by jury in some or all juvenile cases, however.

Additionally, the Court held in Schall v. Martin, 467 U.S. 253 (1984) that pretrial detention of an alleged delinquent, based on the risk of his committing additional crimes prior to trial, does not violate the child's due process rights. Although the Court has not yet ruled on the constitutionality of pretrial detention for similar purposes in the adult criminal justice system, it held in this case that, given the protective rather than punitive objectives of the juvenile justice system, pretrial detention of alleged delinquents is compatible with the fundamental fairness requirement of the due process clause of the fifth amendment.

COURT PROCESS FOR CHILD PROTECTION CASES

The following is a summary of the major stages of the juvenile court process as it relates to children alleged to be dependent or neglected, and terminations of parental rights to children.

Pre-Adjudication Detention

As explained more fully on page 55 above, under certain circumstances a child may be taken into immediate custody by a peace officer or by order of the court prior to the juvenile court hearing. In child protection cases, the usual reasons for doing so would be to ensure the child's presence at the hearing or to remove the child from surroundings or conditions which endanger or reasonably appear to endanger the child's health or welfare. Such a child may be held in a shelter care facility for no longer than 72 hours, unless a petition has been filed and the judge determines after a detention hearing that the child should remain in custody. In addition, upon the request of a party, the court will hold the adjudicatory hearing on the petition within 60 days of the detention hearing, unless another party shows good cause why the hearing should not be held. The detention order must be reviewed informally by the judge every eight days until the case is decided. The detention order shall include rules for parental visitation unless visitation would endanger the child's physical or emotional well-being.

Children who are detained because they are alleged child abuse victims cannot be given mental health treatment for the effects of the abuse until the court finds probable cause to believe the abuse occurred or unless treatment is agreed to by the child's parent or guardian, or ordered by the court.

Filing of Petition

Any reputable person, including any agent of the commissioner of human services, may file a petition in juvenile court to adjudicate a child as dependent, neglected, or neglected and in foster care. Any reputable person may likewise petition the juvenile court to terminate the rights of a parent to his or her child if he or she has knowledge of circumstances that support such a petition. Finally, the social service agency responsible for the placement of a child in voluntary foster care may petition the court to review the child's foster care status. All of these petitions are drafted by the county attorney and verified by the petitioner.

First Appearance

This is a hearing at which the child and the child's parents and guardian are required to admit or deny the allegations of the petition. This hearing must be held within ten days after a child has been placed in pre-adjudication detention, or 20 days after the child is served with the petition if he or she is not in detention. If the allegations contained in the petition are admitted, the court will schedule a disposition hearing. If denied, the court will schedule an adjudicatory hearing within 90 or 120 days, depending on whether or not the child is in detention.

Adjudicatory Hearing

The adjudicatory hearing is held to determine if the allegations of the petition are proved. In contrast to the delinquency or offender adjudicatory hearing, proof of the allegations need not be made "beyond a reasonable doubt" but only by "clear and convincing evidence," which is a lesser standard. If the court finds the allegations of the petition are proven, it must either withhold adjudication for up to 180 days, or adjudicate the child as being dependent, neglected, or neglected and in foster care, and schedule a disposition hearing. Where the petition is one to terminate parental rights and the allegations are proven, the court will terminate parental rights and transfer custody of the child in a disposition hearing. Even where the allegations have not been proven, the court may still determine that conditions of dependency or neglect exist, or that the child is neglected and in foster care. In such a case the court will adjudicate the child dependent, neglected, or neglected and in foster care, and will schedule a disposition hearing.

Disposition Hearing

If the court finds that a child is dependent, neglected, or neglected and in foster care, it may order the dispositions summarized on page ?? above. Where the court terminates the parental rights of both parents or of the only known living parent, guardianship and legal custody of the child will be transferred to the commissioner of human services, a licensed child placing agency or a willing individual capable of assuming parental duties.